IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6452 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MADRESA - E - GARIBNAWAZ

Versus

STATE OF GUJARAT

Appearance:

MR NC SHAH for Petitioner No. 1

MR NV GANDHI for Petitioner No. 1

MR HD DAVE, Ld. AGP for Respondent No. 1,3

MR RAVAL for MR AD OZA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 14/07/2004

ORAL JUDGEMENT

Rule. Mr.Dave, learned AGP waives service of rule on behalf of respondents No.1 and 3 and Mr.Raval, learned Counsel for Mr.A.D.Oza appears and waives service of rule on behalf of respondent No.2. With the consent of the parties, the matter is taken up for final hearing

today.

2. The short facts of the case are that the petitioner has applied for registration of the school and the said application of the petitioner was not accepted by the Board. The petitioner carried the matter before the State Government in appeal. Ultimately, the State Government, as per the order dated 18th September, 2003 allowed the appeal and granted permission to open the school. After the aforesaid order was passed by the State Government in appeal, it appears that the respondent Board communicated to the petitioner as per the letter dated 15-4-2004 intimating that the permission granted in pursuance of the order of the State Government is cancelled and it is under these circumstances the petitioner has approached to this Court.

3. Mr.Gandhi, learned Counsel for the petitioner submitted that no opportunity of hearing has been given to the petitioner before passing the impugned order. It has been submitted by Mr.Gandhi that as such in exercise of the appellate power the State Government allowed the appeal and granted permission. Thereafter the State Government could not have cancelled the permission, nor the Board could have cancelled the decision without giving opportunity of hearing. Mr.Gandhi also submitted that there are other contentions which may also arise on the question of power of State Government to cancel the decision.

4. On behalf of the respondent Board, Mr.Raval submitted that the State Government communicated to respondent Board as per letter dated 3-3-2004 that the Government has taken decision to cancel the permission granted for opening the school to the petitioner and the Board has acted upon the decision of the State Government and has, therefore, accordingly communicated the same as per the communication dated 15-4-2004. He has placed on record the decision of the State Government dated 3-3-2004 issued by the Additional Secretary (Appeal), Education Department, State of Gujarat.

5. On behalf of respondents No.1 and 3, Mr.Dave, learned AGP submitted that since the report was received from D.E.O., the State Government found that as sufficient facilities of the building etc., are not available, the school should not be granted permission. However, Mr.Dave has not been able to dispute the factual aspect that opportunity of hearing has not been given to the petitioner.

6. Under the above circumstances, it is clear that the order has been passed by the State Government for cancellation of the permission granted for opening the school without giving any opportunity of hearing to the petitioner. As such, once the State Government had exercised the appellate power as per the order dated 18th September, 2003 it could not have cancelled or recalled its own order without giving any opportunity of hearing to the party concerned. I find that it is not necessary for this Court to examine the larger issue as to whether the State Government could review its own order once it has exercised the appellate power at this stage, since the order would be vulnerable on the point of breach of principles of natural justice.

7. So far as respondent No.2 Board is concerned, it has acted upon the orders of the State Government and, therefore, if the order of the State Government dated 3-3-2004 would be rendered illegal, the consequential effect would be that the order passed by the Board acting upon the order of the State Government cannot also be sustained in the eye of law.

8. In view of the above discussion, the order passed for cancelling the permission granted to the petitioner and the order passed by the respondent Board for withdrawing the permission granted to the petitioner on the basis of the order passed by the State Government, both are quashed and set aside on the ground of breach of principles of natural justice with the clarification that it will be open to the State Government to given opportunity of hearing to the petitioner and to passed appropriate orders in accordance with law. As and when the opportunity of hearing would be given to the petitioner, the petitioner shall also be at the liberty to raise all contentions available under the law.

9. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances of the case, there shall be no order as to cost.

14-7-2004 (Jayant Patel, J.)

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